

## REMARKS

Claims 1 - 32 are pending, with claims 1, 2, 4, 16, 17, 19 and 22 having been rejected and claims 3, 5 - 15, 18, 20, 21, and 23 - 32 having been withdrawn.

Claims 1, 2, 4, 16, 17 and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Katayama. Reconsideration of this rejection is respectfully requested for four reasons, as will now be discussed.

**First**, the Examiner has relied on **extrinsic evidence** to determine the meaning of the word “substrate”, when **in fact** a person of ordinary skill in the art **to which the invention pertains** would have **not found** the meaning of this term ambiguous when reading Applicants’ specification. Section 2111.01 of the MPEP states:

“[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, \*415 F.3d 1303, 1313<, 75 USPQ2d 1321>, 1326< (Fed. Cir. 2005) (en banc).”

The Examiner’s reliance on **extrinsic evidence** for the meaning of the term “substrate” is improper, since those of ordinary skill in the art **to which the invention pertains** would have **immediately recognized**, after reading Applicants’ disclosure, that the term ‘substrate’ (as recited in line 2 of claim 1, refers to a support surface that supports the “light filter” recited in line 3 of claim 1). In the art to which this invention pertains, namely, an aperture limiting element that has a wavelength selectivity and includes an aperture that is an open space formed in a substrate, and in an area outside the aperture and that surrounds the aperture a light filter is provided, the term “substrate” is a ‘term of art’ with a well-defined meaning. It is well known by those of ordinary skill in the art to which the invention pertains that a “light filter” is often formed of materials that lack structural rigidity, and thus such a material must be formed on a substrate that provides support. Common examples of such light filters are ones formed by various thin-film vapor deposition techniques, as well as ones formed by holography, wherein a gel substance is applied to a substrate and light beams are used to form interference patterns in the gel, which is

then developed in a manner similar to developing camera film. Thus, one of ordinary skill in the art to which **this** invention pertains, would have **immediately recognized** the meaning of the term “substrate” as referring merely to a “support surface” of the light filter. Only where there would be ambiguity on the part of a person of ordinary skill in the art to which the invention pertains and who has read Applicants’ disclosure, should an Examiner resort to **extrinsic** evidence to determine the scope of a claim.

**Second**, by relying on such extrinsic evidence, the Examiner **clearly** mischaracterizes the components of Fig. 2 of Katayama (more specifically, of Fig. 2(b) of Katayama). In particular, the Examiner has mischaracterized items 22 and 23 shown in Fig. 2(b) of Katayama as being “substrates” in a manner that is contrary to the explicit teachings of Katayama and in a manner that is inconsistent with the meaning a person of ordinary skill in the art to which the invention pertains would ascribe to the term “substrate” after reading Applicants’ specification. The components labeled in Fig. 2(a) of Katayama are the items 15 and 20, and these are identified in the machine translation in the section entitled '[Description of Notations]' as follows:

15 is an "Opening limit component", and

20 is a "Circular slot".

Fig. 2(b) of Katayama is a sectional view of the apparatus shown in Fig. 2(a) of Katayama, with Fig. 2(a) being a top view. The components shown in Fig. 2(b) include not only the components 15 and 20 that are shown in Fig. 2(a), but also the components 21, 22 and 23. In addition, Fig. 2(b) illustrates the dimensions "2a" and "2b" that are discussed in Katayama. The components 21, 22, and 23 are identified in the machine translation of Katayama in the section entitled '[Description of Notations]' as follows:

21 is a "Substrate"

22 is a "Wavelength filter film"

23 is a "Phase compensating film"

Thus, by improperly relying on **extrinsic evidence**, namely, a dictionary definition that does **not** pertain to the relevant art of **the invention claimed**, the Examiner has interpreted the scope of claim 1 to be too broad. A person of ordinary skill in the art to which the invention

pertains, having read Applicants' disclosure, would clearly **not** interpret the scope of claim 1 to be such that it would be anticipated by Katayama. More specifically, a person of ordinary skill in the art to which the invention pertains and who had read Applicants' disclosure, would **immediately recognize that** neither of the layers 22 or 23 of Katayama are "substrates" as this term is used by Applicants in claim 1.

**Third**, as is clearly shown in Fig. 2(b) of Katayama, in Katayama there is no "aperture that is an open space of a specified size formed in a substrate" as required by line 2 of Applicants' claim 1. Indeed, the substrate 21 of Katayama is an example of a prior art aperture limiting element that is **expressly discussed** in Applicants' specification (at the bottom of page 2) and is illustrated by the aperture limiting element 104 shown in prior art Fig. 20 of Applicants' drawings. Note that in Fig. 20 the substrate **does not include** an open space of a specified size, and thus light passing through the aperture of the aperture limiting element 104 of Fig. 20, is reflected by the substrate and returned to the laser light source, thereby causing unwanted instability in the laser light source, as discussed in the paragraph spanning pages 3 and 4 of Applicants' specification. On the other hand, as discussed in the paragraph that begins at page 6, line 10, of Applicants' specification, the present invention is characterized by there being an aperture that is an open space of a specified size formed in the substrate so that no light passing through the aperture of the aperture limiting element is reflected by the substrate and returned to the laser light source. Just as in the prior art discussed in Applicants' specification, in Katayama, the substrate **does not include** an open space of a specified size, and thus some of the light passing through the aperture of the aperture limiting element would be reflected by the substrate and returned to the laser light source, thereby causing unwanted instability in the laser light source.

**Fourth**, as amended, claim 1 now requires "said aperture limiting element is used in an optical pickup device that can read two types of recording media, and the wavelength used to read a particular type of optical recording medium is selected in accordance with the type of optical recording medium to be read".

For the foregoing four reasons, it is asserted that Katayama **does not** anticipate amended claim 1 above. As claims 2, 4, 16, 17 and 19 directly or indirectly depend from claim 1,

Katayama also does not anticipate claims 2, 4, 16, 17 and 19, at least by reason of their dependency from claim 1.

Claim 22 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Katayama in view of Kadowaki. Reconsideration of this rejection is respectfully requested. Claim 22 is a dependent claim that depends from claim 16. Thus, it includes all the limitations of claim 16. As claim 16 is a dependent claim that depends from claim 1, claim 22 also includes all the limitations of claim 1. Thus, claim 22 patentably distinguishes over the combined teachings of Katayama in view of Kadowaki **at least** for the reasons discussed above for claim 1, since Kadowaki in no way makes up for the deficiency of Katayama as discussed above.

An Information Disclosure Statement (IDS) is being filed concurrently with the filing of this response, along with a Transmittal letter that discusses the relevance of the prior art listed on the IDS. It is believed that no IDS fee is due, since the IDS is being filed with an RCE.

Having amended base claim 1, having pointed out the manner in which claim 1 distinguishes over the rejections of record, and having provided an IDS to bring to the Examiner's attention additional prior art, it is respectfully requested that an early Notice of Allowability be provided.

Respectfully submitted,  
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